

BARBARA STUART ROBINSON,
Plaintiff,

BAY AREA RAPID TRANSIT DISTRICT,
Defendant.

Case No. 19-cv-00738-PJH

ORDER

Re: Dkt. Nos. 5, 13, 15

On April 15, 2019, the previously assigned judge, Magistrate Judge Donna M. Ryu, dismissed plaintiff's complaint pursuant to 28 U.S.C. § 1915(e). Dkt. 11 (the "April Order"). The April Order required plaintiff to file an amended complaint by April 30, 2019. *Id.* at 6.

On May 6, 2019, having received no amended complaint, Judge Ryu ordered the action reassigned to a district judge for final disposition and recommended that the newly-assigned district judge dismiss the action without prejudice for failure to prosecute. Dkt. 13 (the “R&R”). That same day, the action was assigned to this court. Dkt. 14.

After Judge Ryu issued her R&R, but still on May 6, 2019, plaintiff filed a “Motion to Consider Plaintiff’s Amended Complaint,” Dkt. 15, and an amended complaint, Dkt. 16. Plaintiff’s motion explains that she did not receive the April Order in time to file an amended complaint because she had recently changed her mailing address. Dkt. 15. Plaintiff’s amended complaint is nearly identical to the complaint Judge Ryu dismissed pursuant to § 1915(e). Compare Dkt. 1 with Dkt. 16. Moreover, unlike plaintiff’s original complaint which attached a declaration containing all of plaintiff’s factual allegations, plaintiff’s amended complaint attached no such declaration and is thus largely devoid of

1 allegations related to the complained of conduct.

2 In light of the above, the court hereby ORDERS as follows:

- 3 (1) The court GRANTS plaintiff's motion for consideration of the
4 amended complaint.
- 5 (2) The court DECLINES to adopt Judge Ryu's R&R.
- 6 (3) The court DISMISSES plaintiff's amended complaint pursuant to
7 § 1915(e) for the same reasons stated in the April Order and
8 because the amended complaint contains no factual allegations.
- 9 (4) If plaintiff wishes to proceed with this action, she shall file a second
10 amended complaint no later than June 14, 2019. The second
11 amended complaint, if any, must address the deficiencies identified
12 in the April Order and must contain factual allegations. That is, the
13 second amended complaint may not attempt to incorporate any of
14 plaintiff's prior complaints or her previously filed declaration. Plaintiff
15 is forewarned that if she fails to file a timely second amended
16 complaint, the court will dismiss her action.
- 17 (5) Plaintiff's Motion for Permission for Electronic Case Filing, see Dkt.
18 5, is GRANTED.

19 **IT IS SO ORDERED.**

20 Dated: May 23, 2019



21
22 PHYLLIS J. HAMILTON
23 United States District Judge
24
25
26
27
28